

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Tommie Salter  
Jacksonville, Florida

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File No.: EB-03-TP-191  
NAL/Acct. No. 200532700002  
FRN 0011485604

**MEMORANDUM OPINION AND ORDER**

**Adopted:** February 16, 2005

**Released:** February 18, 2005

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order* (“*Order*”), we grant in part and deny in part the petition for reconsideration filed by Tommie Salter of the *Forfeiture Order* issued December 27, 2004<sup>1</sup> and reduce the assessed forfeiture amount to five hundred fifty dollars (\$550), in light of evidence Mr. Salter has submitted regarding his inability to pay. The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$10,000 to Mr. Salter for the willful violation of Section 301 of the Communications Act of 1934, as amended (“*Act*”).<sup>2</sup> The noted violation involved Mr. Salter’s operation of a citizens band (“*CB*”) radio station without Commission authorization.

**II. BACKGROUND**

2. Agents from the Commission’s Tampa Office of the Enforcement Bureau (“*Tampa Office*”) determined that Mr. Salter operated a CB transmitter that was not FCC certificated for CB use.<sup>3</sup> They also observed Mr. Salter, who had been informed by an Official Notice not to operate between 6 a.m. and 11:59 p.m., operating his CB radio station during restricted hours. Because Mr. Salter operated his CB station in a manner inconsistent with the Commission’s Rules (“*Rules*”), he was not authorized to operate his CB station.<sup>4</sup> On October 18, 2004, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Mr. Salter in the amount of ten thousand dollars (\$10,000) for the apparent willful violation of Section 301 of the Act.<sup>5</sup> On November 18, 2004, Mr. Salter filed a response to the *NAL* essentially arguing that his violations were not willful, because he did not intend to violate the Rules.

3. Finding that for a violation to be willful, it must be committed consciously and deliberately, irrespective of any intent to violate the Rules,<sup>6</sup> the Enforcement Bureau issued a *Forfeiture*

<sup>1</sup>*Tommie Salter*, Forfeiture Order, DA 04-4012 (Enf. Bur. December 27, 2004) (“*Forfeiture Order*”).

<sup>2</sup>47 U.S.C. § 301.

<sup>3</sup>See 47 C.F.R. § 95.409.

<sup>4</sup>See 47 C.F.R. § 95.404.

<sup>5</sup>*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532700002 (Enf. Bur., Tampa Office, October 18, 2004) (“*NAL*”).

<sup>6</sup>See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Order upholding the *NAL* on December 27, 2004. The Bureau received Mr. Salter's petition for reconsideration on January 14, 2005. In his petition, Mr. Salter does not contest the violations found in the *Forfeiture Order*. However, he seeks cancellation or reduction of the assessed forfeiture based on his inability to pay. Mr. Salter, who asserts he is retired and living on Social Security and fixed retirement benefits, provided copies of his tax returns to support his claim.

### III. DISCUSSION

4. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>7</sup> Section 1.80 of the Rules,<sup>8</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>9</sup> In examining Mr. Salter's petition, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and any other such matters as justice may require.<sup>10</sup>

5. The Commission has determined that, in general, an entity's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>11</sup> After reviewing Mr. Salter's claim and tax returns, we believe that payment of a \$10,000 forfeiture would pose a financial hardship. Therefore, we find that a reduction of the forfeiture to \$550 is warranted based on his inability to pay.<sup>12</sup> Pursuant to Sections 4(i) and 308(b) of the Act,<sup>13</sup> we also direct Mr. Salter to submit a statement to the Enforcement Bureau that he has either ceased operating his CB station or come into compliance with all Rules, including restricted hours imposed by Official Notices. This statement, made under penalty of perjury, must be signed by Mr. Salter and submitted no more than thirty days after the release of this *Order*.

### IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,<sup>14</sup> and Section 1.106 of the Commission's Rules,<sup>15</sup> Tommie Salter's petition for reconsideration of the December 27, 2004 *Forfeiture Order* **IS** hereby **GRANTED** to the extent noted herein and **DENIED** in all other respects.

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<sup>7</sup>47 U.S.C. § 503(b).

<sup>8</sup>47 C.F.R. § 1.80.

<sup>9</sup>12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

<sup>10</sup>47 U.S.C. § 503(b)(2)(D).

<sup>11</sup>*PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

<sup>12</sup>*See PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues). In this case, the reduced forfeiture represents a smaller percentage than those issued in the *Local Long Distance, Inc.* and *Hoosier Broadcasting Corp.*, cases, and a higher percentage compared to the forfeiture issued in *PJB Communications of Virginia, Inc.*

<sup>13</sup>47 U.S.C. §§ 154(i), 308(b).

<sup>14</sup>47 U.S.C. § 405.

<sup>15</sup>47 C.F.R. § 1.106.

7. Payment of the \$550 forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>16</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the "Federal Communications Commission." The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank "Bank One," and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>17</sup>

8. **IT IS FURTHER ORDERED** that, pursuant to Sections 307(e) and 308(b) of the Communications Act of 1934, as amended,<sup>18</sup> Tommie Salter must submit the statement described in paragraph 5 above, no more than thirty (30) days following the release of this *Order*, to the Federal Communications Commission, Enforcement Bureau, South Central Region, 3575 Koger Boulevard, Suite 320, Duluth, Georgia 30096-4958, Attention: Regional Counsel.

9. **IT IS FURTHER ORDERED** that this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Tommie Salter at his address of record and Donald E. Pinaud, Jr., 4069 Atlantic Boulevard, Jacksonville, Florida 32207.

#### FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>16</sup>47 U.S.C. § 504(a).

<sup>17</sup>See 47 C.F.R. § 1.1914.

<sup>18</sup>47 U.S.C. §§ 307(e), 308(b).